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April 23, 2020

VIA ECF AND FACSIMILE

Honorable Laura Taylor Swain
U.S. District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Re: Adler v. Solar Power, Inc., et al.
Case No. 16-CV-01635 (LLS)(GWG)

Dear Judge Swain:

My office represents the corporate defendants (collectively, “SPI”) in connection with the above matter. I, together with Plaintiff’s counsel, submit this joint status letter and respectfully request that the Show Cause Hearing scheduled to continue on April 28, 2020, be adjourned to May 22, 2020, or any date thereafter that is convenient for the Court

As the Court may recall, at the Show Cause hearing held on February 7, 2020, the parties agreed that in order for SPI to satisfy its remaining settlement payment obligation to Plaintiff, SPI would assign to Plaintiff a portion of the monies due SPI from Valta Energy (“Valta”) when the Mauka FIT One LLC solar project in Hawaii (“Mauka Project”) reaches its Commercial Operations Date (“COD”) milestone sufficient to pay the balance of the settlement.^{1,2} The parties also agreed that to the extent there were any delays to the Mauka Project due to no fault of SPI, and which resulted in payment to Plaintiff being delayed beyond April 28, 2020, the parties would agree to adjourn the Show Cause hearing from April 28 to June 1, 2020. *See* ECF docket entry on February 18, 2020.

Subsequent to the Show Cause Hearing on February 7, the parties formally entered into the aforementioned assignment agreement, and SPI executed and submitted a payment instruction letter to Valta. Due to the COVID-19 pandemic and the resulting stay-at-home restrictions instituted in Hawaii, there has been a delay in the Mauka Project reaching the COD milestone. On April 20, 2020, Valta submitted a request to HECO for an extension until July 4, 2020, to meet the

¹ SPI was the developer of the Mauka Project and sold it to Valta in March 2018. Valta has a Power Purchase Agreement with Hawaiian Electric Company, Inc. (“HECO”).

² Per the settlement agreement between SPI and Plaintiff, the balance of the settlement amount owed to Plaintiff as of February 1, 2020, continues to accrue 18% annual interest until fully paid.

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COD milestone, but HECO granted an extension only until June 5, 2020. Accordingly, at this time the Mauka Project is expected to reach the COD milestone by June 5, 2020.

SPI sought consent from Plaintiff to adjourn the continuation of the Show Cause hearing to a date beyond May 22, 2020. However, Plaintiff would only consent to an adjournment to May 22 because Plaintiff believes that the COD date will be reached before June 5, and the payment will be due,³ and is concerned that the money will not be paid over to Plaintiff if time elapses after the payment date based on Plaintiff's view of the history in this action. Prior to May 22, the parties will provide the Court with another status update.

The parties thank the Court for its time and attention to this application.

Respectfully submitted,

Kuuku Minnah-Donkoh

Kuuku Minnah-Donkoh

cc: Roger Marion, Esq. (via ECF)

The hearing is adjourned to May 22, 2020, at 2:00 p.m. The parties must file a joint status report by Wednesday May 20, 2020, at 12:00 p.m. noon. DE#198 resolved.

SO ORDERED.

4/24/2020

/s/ Laura Taylor Swain, USDJ

³ Assuming the COD milestone is reached on June 5, 2020, HECO would issue a Permission to Operate ("PTO") letter to Valta within 3 to 5 business days thereafter, so by June 12, 2020. Per the Membership Interest Purchase Agreement between SPI and Valta, payment from Valta to SPI (and now also Plaintiff) would be due within 10 business days thereafter, so by June 26, 2020.